

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 1999-240-E - ORDER NO. 1999-390

JUNE 3, 1999

IN RE:	Application of Duke Energy Corporation for)	ORDER
	Authorization to Issue Subordinated Notes)	APPROVING
	and Guarantee certain Obligations in)	APPLICATION
	Connection with Issuance of Preferred)	
	Securities by Duke Energy Capital Trust II,)	
	Duke Energy Capital Trust III and Duke)	
	Energy Capital Trust IV.)	

On May 21, 1999, Duke Energy Corporation (the "Company") filed an application (the "Application") for authorization to issue subordinated notes and guarantee certain obligations in connection with a proposed issuance of preferred securities by Duke Energy Capital Trust II, Duke Energy Capital Trust III and Duke Energy Capital Trust IV, all statutory business trusts created under the laws of Delaware (the "Trusts"), all in the manner described in the Application.

FINDINGS OF FACT

1. The Company is a corporation duly organized and existing under the laws of the State of North Carolina. It is duly authorized by its Articles of Incorporation, as amended, to engage in the business of generating, transmitting, distributing, and selling electric power and energy and in the business of operating water supply systems. It is duly domesticated in the State of South Carolina and is authorized to conduct and carry on business in this State, and in conducting and carrying on the businesses above mentioned in each of said States. It is a public utility under the laws of this State and in

its operations in this State is subject to jurisdiction of this Commission. It is a public utility under the laws of the State of North Carolina and in its operations in that State is subject to the jurisdiction of North Carolina Utilities Commission. It is a public utility under the Federal Power Act, and certain of its operations are subject to the jurisdiction of the Federal Energy Regulatory Commission.

2. The Company proposes, pursuant to its application in this Docket, to issue and sell to the Trusts subordinated notes (the "Notes") under the terms of the Company's Subordinated Indenture to The Chase Manhattan Bank, as Trustee, dated as of December 1, 1997. The aggregate principal amount of all such Notes issued and sold will not exceed \$516 million. The Trusts will issue and sell, at any time or from time to time in one or more series (not to exceed one series per Trust), up to an aggregate of \$500 million liquidation amount of preferred securities (the "Preferred Securities"). With respect to each series, the Company will acquire all of the common securities of the relevant Trust for an amount up to 3% of the total equity capitalization of the Trust (the aggregate of such investment by the Company is herein referred to as the "Equity Contribution"). The Trust will apply both the Equity Contribution made to it by the Company and the proceeds it receives from the sale of the Preferred Securities by it to purchase the Notes that the Company shall issue in connection with that series of Preferred Securities.

Each Note issued will have a term (including any extension) of up to 40 years. Prior to maturity, the Company will pay interest on the Notes at a rate equal to the distribution rate on the related series of Preferred Securities, which distribution rate shall be a fixed rate.

The Company expects that its interest payments on the Notes issued by it and the distributions on the Preferred Securities issued by the Trusts will be deductible for income tax purposes. The Notes issued by the Company will be shown on the Company's unconsolidated balance sheet as unsecured subordinated notes under other long-term debt. With respect to the Company's consolidated financial statements, the Notes will eliminate in consolidation and the Preferred Securities will be shown on the Company's balance sheet under a separate item for "Guaranteed Preferred Beneficial Interests in Corporation's Subordinated Notes" or a similar designation. The Preferred Securities (and the underlying Notes) will be callable at par at the option of the Company beginning five years from the date of issue. However, in the event that a change in applicable tax law results in a loss of the anticipated favorable tax treatment, the Preferred Securities and the Notes become immediately callable at par.

The Company proposes to guarantee (i) payment of distributions on the Preferred Securities issued and sold by the Trust, but only if and to the extent the Trust has funds available therefor, (ii) payments to the Preferred Securities holders of amounts due upon liquidation of the Trust or redemption of the Preferred Securities of the Trust, but only if and to the extent that the Trust has Funds available therefor, and (iii) certain additional amounts that may be payable in respect of the Preferred Securities, certain of which are more fully described below. The Company's obligations under the guarantees are subordinate and junior in right of payment to all of its other liabilities (except similar guarantees and other obligations that rank *pari passu* or subordinated by their terms) and will rank *pari passu* with the preferred stocks of the Company.

While the Company expects that the Preferred Securities will carry a somewhat higher “dividend” rate than a perpetual preferred issue, the expected tax deductibility of dividend payments on the related Preferred Securities will afford a net decrease in the Company’s cost of capital. The Company understands that the financial markets will view the financing that the Company obtains through the Preferred Securities as having similar equity characteristics as would be the case if the Company were to issue long-dated preferred stock. The Company also understands that the rating agencies will view the financing that the Company obtains through the Preferred Securities as having certain equity characteristics.

With respect to each series of Preferred Securities issued, proceeds from the sale of the Notes to the Trust may be used for (a) the purchase or redemption of the Company’s outstanding higher cost securities as hereinafter provided, (b) refunding maturing securities, (c) financing the Company’s ongoing construction (including the acquisition of nuclear fuel), or (d) general corporate purposes. In each case, such proceeds may be used for the repayment of short-term debt incurred for such purposes.

Pursuant to an agreement as to expenses and liabilities to be entered into by the Company and each respective Trust in conjunction with the issuance of a new series of Preferred Securities, the Company will guarantee to each person or entity to whom the Trust becomes indebted or liable the full payment of any indebtedness, expenses or liabilities of the Trust, other than obligations of the Trust to pay to the holders of the Preferred Securities the amounts due such holders pursuant to the terms of the Preferred Securities. Because of the strictly limited nature of the Trust’s operations as set forth in its governing documents, such amounts are expected to be nominal.

The Company will pay no fee for services (other than for attorneys, accountants and trustees and fees for similar technical services) in connection with the negotiation or consummation of the transaction described herein, nor for services in securing underwriters, agents, dealers or purchasers for the Preferred Securities or Notes described herein (other than fees negotiated with such persons). As reported by the Company to this Commission in Docket No. 97-475-E, an underwriting fee of up to 3.15% of the aggregate liquidation amount of the Preferred Securities is generally considered to be consistent with underwriting fees charged in similar transactions in the marketplace.

When the net proceeds from the sales of any of the Preferred Securities (and the corresponding issuance of the Notes) will be applied and used by the Company to purchase or redeem certain of the Company's outstanding unmatured securities, such sales will be made from time to time when market conditions permit the sales on terms which would result in a lower cost of money to the Company. Any premium paid on purchased or redeemed securities will be amortized over the life of the new securities, and the Company proposes to include the after-tax amount of such unamortized premium in the Company's rate base as a component of working capital. As previously noted, the net proceeds may be applied and used by the Company to refund maturing securities, including the repayment of short-term debt incurred for that purpose.

The Company has presently identified \$800 million aggregate principal amount of its First and Refunding Mortgage Bonds that are or may become redeemable in the near term, subject to market conditions, and the Company may use a portion of the net proceeds from the sale of the Preferred Securities (and the corresponding issuance of the Notes) to redeem such Mortgage Bonds. Further \$425 million aggregate principal

amount of such First and Refunding Mortgage Bonds matures during 1999, and the Company may use a portion of the proceeds from the sale of the Preferred Securities (and the corresponding issuance of the Notes) to repay the principal of such maturing securities.

CONCLUSIONS

Upon review and study of the verified Application, its supporting data and other information in the Commission's files, the Commission is of the opinion, and so finds, that the Company is a public utility subject to the jurisdiction of this Commission with respect to its rates, service, and securities issues and that the issuance and sale of the Notes to the Trusts in each series of Preferred Securities and the guarantee of certain obligations of the Trusts, as set forth in the Company's Application, are

- a) For lawful objects within the corporate purposes of the Company;
- b) Compatible with the public interest;
- c) Necessary and appropriate for and consistent with the proper performance by the Company of its service to the public and will not impair its ability to perform that service; and
- d) Reasonably necessary and appropriate for such purposes.

When the net proceeds from the sales of securities herein authorized are applied and used by the Company to purchase or redeem certain of the Company's outstanding unmatured securities, such sales will be made from time to time when market conditions will permit the sales on terms which would result in a lower cost of money to the Company. Any premium paid on purchased or redeemed securities shall be reflected in the going-forward cost of the newly issued securities.

If any of the securities are sold through a noncompetitive methodology such as in a private placement or at a negotiated price, the Company will on the day of pricing or the next business day notify the Commission in writing (initially by fax is acceptable) of the terms and basis of the pricing including comparative current market data of other similar financing transactions.

IT IS, THEREFORE, ORDERED that Duke Energy Corporation be, and it is hereby, authorized, empowered, and permitted, upon the terms and conditions set forth in its Application;

1. To issue and sell from time to time a maximum of \$500,000,000 principal amount of its Subordinated Notes to the Trusts in one or more series, as described in the Application;

2. To guarantee certain obligations in connection with the issuance of the Preferred Securities by one or more of the Trusts, as described in the Application; and

3. To use the net proceeds of such sales to purchase or redeem higher cost securities, to refund maturing securities, to finance its ongoing construction (including the acquisition of nuclear fuel), and general corporate purposes, including the repayment of short-term debt obligations incurred for those purposes.

IT IS FURTHER ORDERED, that:

1. The Company file a written report to the Commission within thirty (30) days after the consummation of the sale by competitive bidding, private placement, negotiation, or whatever method used to sell Notes and Preferred Securities as herein approved. The report shall contain as a minimum the following data:

a) Date of Sale;

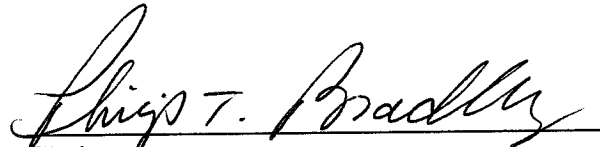
- b) Principal amount sold;
- c) Stated coupon/interest/dividend rate;
- d) The offering price to the public/purchaser;
- e) The underwriters' commissions/fees;
- f) The net cost to the Company;
- g) Other direct expenses related to the issuance and sale of the securities;
- h) The specific use(s) of the proceeds;
- i) The Docket Number of the Order authorizing the sale and the remaining balance of securities authorized but unsold and the amount of savings in interest/dividends to be realized from the redemption/refinancing transaction being reported; and
- j) A copy of the agreements executed in final form (as soon as available) in connection with the sale of the securities herein authorized.

2. Approval of this Application does not bind the Commission as to the ratemaking treatment of the issue and sale of securities contemplated hereunder.

3. This Order shall not, in any way, affect or limit the right, duty or jurisdiction of the Commission to further investigate and order revisions, modifications, or changes with respect to any provision of this Order in accordance with the law.

4. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)